STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CHARMAINE DESIREE HAWKINS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WILLIE LEE HAWKINS, a/k/a WILLIAM HAWKINS, a/k/a WILLIE LEE HAWKINS III,

Respondent-Appellant,

and

FELICIA DEVON WILLIAMS,

Respondent.

UNPUBLISHED
January 25, 2005

No. 255172
Wayne Circuit Court
Family Division
LC No. 01-401795-NA

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). We affirm.

In this matter, the trial court dismissed the initial permanent custody petition. Three months later, the court authorized the filing of a second petition. Four months after that, the court granted termination of respondent-appellant's parental rights. Respondent-appellant contends that, under these circumstances, termination of his parental rights was barred by res judicata. Because he did not object to the trial court's ruling on that basis, this issue has not been preserved for appellate review. *In re Hensley*, 220 Mich App 331, 335; 560 NW2d 642 (1997). Even if respondent-appellant had properly preserved this issue, the argument lacks merit because respondent-appellant failed to establish that the subject matter of the later action was the same as that of the earlier proceeding. *In re Pardee*, 190 Mich App 243, 248; 475 NW2d 879 (1991).

A prior judgment acts as a bar to a subsequent proceeding only when (1) the subject matter of the second action is the same, (2) the parties or their privies are the same, and (3) the prior judgment was a decision based on the merits. *Id*. The subject matter is the same in both

proceedings if the facts are identical or the same evidence would support both actions. *Id.* at 248. "However, when the facts have changed or new facts develop, the dismissal of a prior termination proceeding will not operate as a bar to a subsequent termination proceeding." *Id.* In this case, that is precisely what transpired: new facts developed over the passage of time. When the court dismissed the first permanent custody petition, it recognized that reunification was not appropriate at that time, i.e., respondent-appellant still was not prepared to care for his daughter. However, considering very recent evidence of progress, particularly that of the mother, the court found insufficient evidence to conclude that the conditions would not be rectified within a reasonable time. In essence, respondent-appellant was given additional time to benefit from the treatment plan and demonstrate that he could provide proper care to his daughter. Unfortunately, in the ensuing months, respondent-appellant failed to comply with the treatment plan. Of particular importance was respondent-appellant's refusal to seek therapy for two major concerns: domestic violence and substance abuse. Consequently, new evidence and a change in circumstances justified pursuit of the second termination proceeding. The doctrine of res judicata simply does not apply in this case.

Next, respondent-appellant argues that evidence of misconduct between July 2, 2003 (dismissal of the first petition) and October 10, 2003 (filing of the subsequent petition) was insufficient to permit a court to conclude that a statutory ground for termination was established by clear and convincing evidence. Respondent-appellant has waived the right to attack the court's ruling on this substantive ground. Respondent-appellant did not raise this claimed error in his statement of questions presented. An argument not raised in the statement of questions presented is not preserved for appeal. *Meagher v McNeely & Lincoln, Inc*, 212 Mich App 154, 156; 536 NW2d 851 (1999). Moreover, this Court may decline to consider an issue given only cursory treatment with little or no citation to authority. *Community Nat'l Bank v Michigan Basic Property Ins Ass'n*, 159 Mich App 510, 520-521; 407 NW2d 31 (1987).

In any event, after reviewing the record, we conclude that there was clear and convincing evidence to support termination. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Contrary to respondent-appellant's assertion, the trial court was not limited to considering respondent-appellant's actions between July 2, 2003 and October 10, 2003. *Pardee, supra* at 249-250. The court was permitted to consider new facts, the change in circumstances and facts existing before the dismissal of the first petition. *Id.* At the time of termination, respondent-appellant still had not addressed his issues of domestic violence and substances abuse. Indeed, one of the events that prompted the filing of the second petition was respondent-appellant's very recent and severe incident of domestic violence. He had yet to make efforts to financially support his daughter, let alone tackle his massive child support arrearage. Respondent-appellant had failed to present verification of legal employment. Perhaps most telling, respondent-appellant, during the entire time Charmaine was in care, failed to consistently attend visitation when such visitation was permitted. The trial court did not clearly err when it found that the statutory grounds for termination were established by clear and convincing evidence.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello